

RESOLUTION NO. 09-81

INTRODUCED BY:

Councilperson Dooley

Councilperson Coppola

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES NORTH
APPROVING A REIMBURSEMENT AND LICENSE AGREEMENT
WITH THE CASTLE PINES PARKS AUTHORITY AND R.I. MANAGEMENT OF
TULSA, INC., AND APPROVING A PUBLIC WORKS GENERAL SERVICES
AGREEMENT WITH HOGAN ACTION SERVICES, INC.
FOR THE LAGAE PARK SITE**

WHEREAS, pursuant to Section 31-15-101, C.R.S., the City Council of the City of Castle Pines North has the authority to enter into contracts; and

WHEREAS, the City Council previously discussed the Reimbursement and License Agreement by and between the City, the Castle Pines Parks Authority (the "Parks Authority") and R.I. Management of Tulsa, Inc. ("R.I. Management") (the "Reimbursement Agreement") at the August 13, 2009 Council meeting; and

WHEREAS, the Reimbursement Agreement has been executed by the Parks Authority and R.I. Management; and

WHEREAS, a copy of the Reimbursement Agreement is attached hereto as **Exhibit 1**; and

WHEREAS, the Reimbursement Agreement provides that the Parks Authority desires to fund certain grading activities at the Lagae Park Site which will result in mitigation of erosion and improve visual sightlines within the Park; and

WHEREAS, the Reimbursement Agreement contemplates that the Parks Authority will advance funds to the City in an amount sufficient to ensure that the grading work is timely completed; and

WHEREAS, Paragraph 1 of the Reimbursement Agreement requires the City to enter into a not to exceed contract with Hogan Action Services, Inc. ("Hogan") or other grading contractor acceptable to the City to complete the grading work at the Lagae Park Site; and

WHEREAS, the grading work at the Lagae Park Site has been publicly bid; and

WHEREAS, Hogan was the entity that was chosen to undertake the grading work at the Lagae Park Site as a result of such public bid process; and

WHEREAS, the City desires to enter into that certain Public Works General Services Agreement with Hogan (the "Grading Contract"), a copy of which is attached hereto as **Exhibit 2**; and

WHEREAS, the Reimbursement Agreement provides that the Parks Authority will reimburse the City for its legal, engineering and administrative costs incurred in conjunction with the Reimbursement Agreement up to twenty five thousand dollars (\$25,000.00).

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO:

Section 1. The City Council hereby approves the Reimbursement Agreement with the Parks Authority and R.I. Management, in the form attached hereto as **Exhibit 1**.

Section 2. The City Council hereby approves the Grading Contract with Hogan, in the form attached hereto as **Exhibit 2**, with the following conditions:

- (a) That the "Initial Advance" of \$258,713.07 required by Paragraph 1 of the Reimbursement Agreement be received by the City from the Parks Authority prior to the Public Works Director allowing Hogan to commence the grading activities described with particularity in the Grading Contract.
- (b) That the City procures a title insurance policy on the "Security Properties," as that term is defined in the Reimbursement Agreement, with an effective date not later than the date of this Resolution.

Section 3. Upon approval of this Resolution, the Mayor is authorized to sign the Reimbursement Agreement and the Grading Contract on behalf of the City.

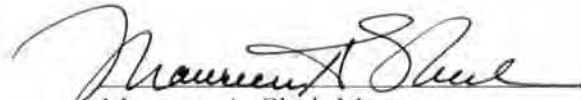
Section 4. The Deputy City Clerk is instructed to record a fully executed copy of the Reimbursement Agreement in the real property records of Douglas County, Colorado.

Section 5. City Staff is directed to separately track all City legal, engineering and administrative costs related to the Reimbursement Agreement in order that the City may be reimbursed for said costs by the Parks Authority in accordance with the applicable provisions of the Reimbursement Agreement.

Section 6. The title insurance policy discussed in Section 2(b) above and required by Paragraph 10.D. of the Reimbursement Agreement shall be issued by Land Title at an approximate cost of \$684.00 to the City. The title insurance policy shall be issued substantially in accordance with the commitment attached hereto as **Exhibit 3**.

Section 7. This Resolution shall be effective immediately upon adoption.

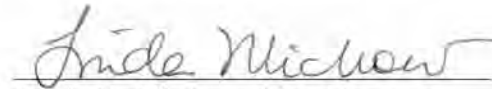
INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH the 22nd day of October, 2009.


Maureen A. Shul, Mayor

ATTEST:


Jamie Berry, City Clerk

APPROVED AS TO FORM:


Linda C. Michow, City Attorney

Attachments:

- Exhibit 1 Reimbursement Agreement**
- Exhibit 2 Grading Contract**
- Exhibit 3 Title Commitment**

REIMBURSEMENT AND LICENSE AGREEMENT

This REIMBURSEMENT AND LICENSE AGREEMENT (the "Agreement") is made this ___ day of September 2009, by and between the CITY OF CASTLE PINES NORTH ("City"), whose address is 558 Castle Pines Parkway, Unit B4-208, Castle Rock, CO 80108, Attention: Mayor of the City of Castle Pines North, the CASTLE PINES PARKS AUTHORITY, a political subdivision of the State of Colorado ("Parks Authority"), whose address is 7402 Yorkshire Drive, Castle Rock, CO 80108, Attention: Manager of Parks and Open Space, and R.I. MANAGEMENT OF TULSA, INC., a North Dakota corporation qualified to do business in Colorado ("Developer"), whose address is 4 Inverness Court East, Suite 300, Englewood, CO 80112.

WITNESSETH

WHEREAS, Developer is the majority owner of property located within Lagae Ranch Filing 1, City of Castle Pines North, State of Colorado (the "Subdivision"); and

WHEREAS, the final plat for the Subdivision is recorded at Reception No. 2008082081 in the real property records of the Clerk and Recorder of Douglas County, Colorado (the "Plat"); and

WHEREAS, City and Developer are parties to that certain Subdivision Improvements Agreement dated November 21, 2008 and recorded at Reception No. 2008082082 in the real property records of the Clerk and Recorder of Douglas County, Colorado (the "SIA"); and

WHEREAS, the Parks Authority, the City, and the Developer are desirous of the Parks Authority initiating design and construction of a public park to be located on Tract A within the Subdivision (the "Lagae Park Site"); and

WHEREAS, the Lagae Park Site and Tracts D, E and F within the Subdivision were dedicated by Developer to City following the date on which the Plat was recorded, for the purpose of building a park; and

WHEREAS, the Developer is the owner of certain real property situate within the boundaries of the City and adjacent to the Lagae Park Site, which property is more particularly described as:

LOTS 232 AND 233, AND TRACT B, INCLUSIVE
LAGAE RANCH FILING 1,
CITY OF CASTLE PINES NORTH,
DOUGLAS COUNTY,
STATE OF COLORADO

(hereafter, the "Security Properties"); and

WHEREAS as part of the conditions of the Plat approved by the City, the Developer agreed to cause overlot grading (the “Overlot Grading”) of the Security Properties identified on the Plat as Lot 232 (“Lot 232” or the “Church Site”), Lot 233 (“Lot 233” or the “Preschool /Day Care Site”), and Tract B (“Tract B”); and

WHEREAS, the Parties have determined that Lot 232 and Lot 233 have available fill material pursuant to the approved grading plan for the Subdivision, that the available fill material may be moved from Lot 232 and Lot 233 to the Lagae Park Site and Tract D, and that Tract B within the Subdivision may be used as a fill area for excess structural fill; and

WHEREAS, the the Developer is not financially able at this time to complete the grading activities contemplated above, and has requested that the Parks Authority and the City cooperate in completing said grading activities in order to timely proceed with the construction of the Lagae Park Site; and

WHEREAS, while the Parties acknowledge that the Parks Authority could proceed with the overlot grading of the Lagae Park Site without completing the grading activities contemplated above, the Parties are willing to enter into this Agreement for the following reasons: (1) a coordinated grading of the Lagae Park Site and the Security Properties will result in a uniform grading plan and the mitigation of erosion, to the advantage of the Lagae Park Site and the public; (2) coordinated grading of the Lagae Park Site and the Security Properties will result in improved transitioning between the properties and improved visual sightlines; and (3) importing fill material to Tract D will allow the Parks Authority to consider improving Tract D as an active park site at a future date; and

WHEREAS, Developer desires to cooperate with the City and the Parks Authority in order to allow certain overlot grading work to be completed on Lot 232, Lot 233 and Tract B, and specifically agrees that City shall have full rights of ingress and egress from such lots in order to accomplish said grading work; and

WHEREAS, a scope of work and preliminary estimate of costs associated with preparing the Lagae Park Site and importing certain fill material to Tract D, has been obtained from Hogan Action Services, Inc., a Colorado corporation (“Hogan”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the preliminary estimate of costs obtained from Hogan is approximately Two Hundred Fifty Eight Thousand Seven Hundred Thirteen and 7/100 Dollars (\$258,713.07) and shall be converted into a binding “not to exceed” contract; and

WHEREAS, the City Council of the City has determined that undertaking the grading work contemplated in this Agreement is important to the growth and development of the Castle Pines North community, is in furtherance of the public health, safety and welfare, and is consistent with the approved plans for the Subdivision; and

WHEREAS, the parties are desirous of the Parks Authority beginning construction within the Lagae Park Site in the fall of 2009; and

WHEREAS, the Parks Authority is willing to advance up to Three Hundred Thousand Dollars (\$300,000.00) to City (the “Parks Authority Advance”) in order that: (1) the City may proceed to formally contract with Hogan or other qualified grading contractor selected by City; and (2) the City may cover its legal, engineering, and other administrative costs associated with the preparation and performance of this Agreement, which costs shall not exceed Twenty Five Thousand Dollars (\$25,000) without prior written consent of the Developer; and

WHEREAS, Developer specifically acknowledges and agrees that it will derive a material benefit (approximately a benefit of \$300,000 in excess grading cost savings) in that some or all or required overlot grading within Lot 232 and Lot 233 will be completed by City during the pendency of the Project, as that term is defined below, and not required to be completed by the Developer after the overlot grading contemplated by this Agreement (the “Project”) is completed; and

WHEREAS, Developer agrees to reimburse City for up to the full amount of the Reimbursement Amount, as defined below, in accordance with the terms and provisions of this Agreement; and

WHEREAS, when City is reimbursed by Developer, or otherwise recovers the amount of the Reimbursement Amount, in accordance with this Agreement, the City shall transfer such monies to the Parks Authority; and

NOW THEREFORE, the parties hereto, for themselves, and their respective successors and assigns, in and for the consideration of the full and faithful performance of the conditions and obligations set forth herein by each party, the receipt and adequacy of which is hereby acknowledged, do hereby covenant and agree as follows:

1. Parks Authority Advance. Within ten (10) calendar days from the date of mutual execution of this Agreement, the Parks Authority shall remit the initial Parks Authority Advance to the City, being equal to the “not to exceed” contract sum of \$258,713.07 (the “Initial Advance”). City agrees that it shall, upon receipt of the Initial Advance: (a) enter into a contract with Hogan or other grading contractor acceptable to City; (b) proceed to complete the Project; and (c) separately account for the Initial Advance. The City shall provide one or more detailed invoices to the Parks Authority for payment by the Parks Authority for portions of the Parks Authority Advance related to reimbursing the City for any legal, engineering, and other administrative costs associated with the preparation and performance of this Agreement (the “City Costs”). The City Costs shall be remitted to the City by the Parks Authority within thirty (30) days following receipt by the Parks Authority of the invoices required by this Paragraph. As set forth above, the City Costs shall not exceed Twenty Five Thousand Dollars (\$25,000.00) without the advance written approval of the Developer. In making the commitment to proceed with the Project, the City Council specifically finds and determines that the Project is within the lawful authority and powers of the City. Upon receipt of any or all of the Reimbursement Amount from Developer, or as otherwise collected by the City in accordance with this Agreement, the City shall remit said funds upon receipt to the Parks Authority.

2. Reimbursement Amount. Within thirty (30) calendar days following completion of the Project, City shall certify to the Parks Authority and Developer the total costs incurred in completing the Project. Said amount certified by the City shall be the total of the Initial Advance and the City Costs (hereafter, the “Reimbursement Amount”). As set forth in Paragraph 5 below, the Reimbursement Amount shall also include penalty interest plus costs and attorneys’ fees incurred by the City in enforcing the terms and provisions of this Agreement. The City will provide the Parks Authority and Developer with a copy of the contract with Hogan (or other grading contractor selected by City) and copies of any and all contractor invoices, authorized change orders, and other documentation of other costs related to the Project, including but not limited to the City Costs, in order that the Parks Authority and Developer may fully and completely substantiate the Reimbursement Amount certified by the City. Any balance of the Parks Authority Advance not expended by City on the Project shall be returned by City to the Parks Authority within ten (10) calendar days following the date on which the Reimbursement Amount is certified by City to the Parks Authority and the Developer. The reimbursement amount (“Reimbursement Amount”) shall be that amount equal to the Parks Authority Advance, plus interest as described below, plus any penalty interest, plus costs and attorneys fees incurred in enforcing this Agreement. . The Developer shall be obligated to pay interest on the Reimbursement Amount as follows:

- 4% per annum for the first 18 months of this Agreement;
- 10% per annum for months 18-24;
- 15% per annum for months 24- to March 1, 2012; and
- 18% per annum penalty interest after March 1, 2012.

3. Obligation to Repay. Developer agrees that it shall be obligated to cause the payment of the Reimbursement Amount to City, which is to be paid to the Parks Authority in accordance with this Agreement. Developer shall be personally liable for the representations and warranties made in this Agreement, but if the Developer has not breached said representations and warranties and the City forecloses on the secured properties because Developer has not paid the Reimbursement Amount as required, then Developer’s liability shall be limited to a security interest in the Security Properties as that term is defined herein.

A. This Agreement shall be recorded in the real property records of the Clerk and Recorder of Douglas County, Colorado against the Security Properties, being more particularly described as:

LOTS 232 AND 233, AND TRACT B, INCLUSIVE
LAGAE RANCH FILING 1,
CITY OF CASTLE PINES NORTH,
DOUGLAS COUNTY,
STATE OF COLORADO

B. The Parties to this Agreement specifically acknowledge and agree that the Reimbursement Amount shall constitute a valid special assessment of City imposed against the Security Properties. The City agrees that it shall pay the Reimbursement Amount to the Parks

Authority upon receipt of the Reimbursement Amount from the Developer or after the same has been obtained by the City through foreclosure or other legal action with respect to collecting the Reimbursement Amount. The City shall not forgive, file a notice of satisfaction, or otherwise release any of the Security Properties from the special assessment lien created by this Agreement until the Parks Authority is paid the Reimbursement Amount. The City shall be entitled to deduct from the its payment to the Parks Authority of the Reimbursement Amount any amounts it incurs for court costs and legal fees in enforcing this Agreement against the Developer, its successors and assigns, or the Security Properties, provided that in not event shall such amount be less than the Parks Authority Advance plus any applicable interest.

C. At the time of any subsequent sale or conveyance of one, any or allof the Security Properties, the total amount of the Reimbursement Amount shall be conveyed to City. Developer shall have the affirmative obligation to inform any title company conducting the closing of one, any or all of the Security Properties of the existence of this Agreement and ensure that the Reimbursement Amount is paid out of closing proceeds or otherwise satisfied. If the proceeds of the sale of one of the Security Properties is insufficient to fully pay the Reimbursement Amount to City, Developer’s obligation to pay the Reimbursement Amount shall continue to run with the Security Properties until fully satisfied.

4. Sale or Gift of Security Properties. Developer agrees that it shall use commercially reasonable efforts to sell the Security Properties for a price which is commercially reasonable and not at an unreasonably discounted or inflated rate. Notwithstanding anything herein, the Developer shall in no event sell, convey or donate the Security Properties for an amount that would provide net proceeds to the City of less than the Reimbursement Amount. Developer agrees to provide City with written notice of the pending sale of any or all of the Security Properties, which notice shall include: (a) the scheduled closing date; and (b) a copy of the preliminary settlement statement showing estimated net proceeds to Developer, as seller. Developer further agrees that if it determines to donate, gift, or otherwise convey the Security Properties to an entity that desires to use such site for a civic use in accordance with the final plat for the Subdivision and the Lagae Ranch Planned Development for little or no monetary consideration, and that such donation or gift is scheduled to occur prior to the date on which one of the Security Properties has been purchased by a third party purchaser for value, Developer shall cause the person or entity to which the Security Property is to be transferred to remit the full Reimbursement Amount to City on or before the date on which the deed transferring any of the Security Properties is recorded in the real property records of Douglas County.

5. City Right to Foreclose Penalty Interest. Developer specifically acknowledges and agrees that if City has not received the Reimbursement Amount, including all interest accrued on such amount on or before March 1, 2012 (“Final Due Date”), any outstanding balance of the Reimbursement Amount shall be considered immediately due and payable to City, and penalty interest shall begin to accrue on the outstanding balance at the rate of eighteen percent (18%) per annum as set forth in Paragraph 2 above. In addition, City shall be permitted to foreclose its lien for the Reimbursement Amount in accordance with Section 31-25-1101 et seq., C.R.S., and collect its costs as permitted therein, including but not limited to publication costs, costs of sale, and service of process fees. The City represents to the Parks Authority that it will diligently take all legal action reasonably necessary to recover the Reimbursement Amount if the same has not

been satisfied in full by the Final Due Date, including but not limited to foreclosing its lien for the outstanding balance of the Reimbursement Amount as against the Security Properties. Unless and until the Reimbursement Amount is fully satisfied, the City shall have the additional right to deny Developer, and/or its successors and assigns, building permits for any lots or tracts located within the Subdivision.

6. Satisfaction of Special Assessment. Upon City's receipt of the Reimbursement Amount from Developer and payment of the Reimbursement Amount to the Parks Authority, City shall record a notice of satisfaction, release of lien, or other document the form of which is acceptable to the City Attorney evidencing that the Security Properties are no longer subject to the special assessment represented by the Reimbursement Amount.

7. License. Developer hereby grants a non-revocable license ("License") to City to enter onto the Security Properties and other parcels owned by Developer in the immediate vicinity of the Lagae Park Site in order to complete the Project. The License shall terminate on July 1, 2010 or on the date that the Project is completed, whichever first occurs.

8. Governing Law and Enforceability. This Agreement shall be construed in accordance with the laws of the State of Colorado, and venue shall be in the District Court of the County of Douglas, State of Colorado.

9. Time if of the Essence. Time is of the essence hereof provided, however, that if the last day permitted or the date otherwise determined for the performance of any act required or permitted under this Agreement falls on a Saturday, Sunday, or legal holiday, the time for performance shall be extended to the next succeeding business day, unless otherwise expressly stated.

10. Developer Representations. Developer hereby represents and warrants to and for the benefit of City and the Parks Authority:

- A. That it has full power and authority to enter into this Agreement; and
- B. Neither execution and delivery of this Agreement nor compliance by Developer with any terms, covenants and conditions is or shall become a default under any other agreement or contract to which Developer is a party, or by which Developer is or may be bound; and
- C. Developer has taken and performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver, and perform its obligations under this Agreement.
- D. Developer represents to the City that it owns the Security Properties free and clear of encumbrances, except for current *ad valorem* property taxes due and owing. The City agrees that it shall, at its sole expense, procure a title commitment/title insurance policy for the Security Properties in the amount of \$300,000, prior to the Parks Authority conveying to the City the Parks

Authority Advance. In the event such title commitment/title insurance policy discloses the existence of any lien or encumbrance upon any of the Security Properties that is or would be prior in enforceability to the lien created in favor of the City by this Reimbursement Agreement, then the Parks Authority shall have no obligation to pay the Parks Authority Advance, and this Reimbursement Agreement may be terminated by the City or the Parks Authority in their discretion and be of no further force or effect and the obligation undertaken by the City or the Parks Authority to expend the funds identified in paragraph 1 hereof shall terminate without fault or liability to the City or the Parks Authority .

The foregoing representations and warranties are made as of the date hereof and shall be deemed continually made by Developer to City and the Parks Authority for the entire term of this Agreement.

11. Assignment. No party to this Agreement may assign its interest herein without the prior written consent of the other parties. Any assignment without such consent shall be void.

12. Waiver. No waiver by any of the parties of any term or condition of this Agreement shall be deemed to be or shall be construed as a waiver of any other term or condition of this Agreement, nor shall any waiver of a breach of any provision of this Agreement be deemed to constitute a waiver of any subsequent breach of the same provision.

13. Recording of Agreement. Upon execution of this Agreement by all parties, this Agreement shall be recorded in the office of the Clerk and Recorder of Douglas County. Upon receipt of the full amount of the Reimbursement Amount by City and payment by the City to the Parks Authority, City shall record a document releasing the Security Properties from the lien of special assessment, in accordance with the provisions of Paragraph 6, above.

14. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. Nothing in this Agreement shall be construed or interpreted as amending or altering in any way any term or provision of the SIA.

15. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

17. Attorney's Fees. In the event any party hereto should default in any of its obligations herein and the party or parties not in default commence legal action against the defaulting party, the defaulting party expressly agrees to pay all the non-defaulting party's or parties' reasonable expenses of litigation, including attorney's fees.

18. No Third Party Beneficiaries. Except as herein provided, no person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, Hogan or other grading contractor selected by City to undertake the Project, or any other subcontractor(s) providing work, services or materials for the Project.

19. Notices. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the addresses set forth in the introductory paragraph of this Agreement and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF CASTLE PINES NORTH

Maureen A. Shul, Mayor

ATTEST:

APPROVED AS TO FORM:

Janie Berry, City Clerk

Linda C. Michow, City Attorney

CASTLE PINES PARKS AUTHORITY

By: _____
Anna Mallinson, President

R.I. MANAGEMENT OF TULSA, INC.,
a North Dakota corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

HOGAN ACTION SERVICES, INC.

Office: 303-421-3478

"The Dirt Masters"

Fax: 303-421-3488

J. "Chris" Hogan, President
9035 Wadsworth Parkway, Suite 4100
Westminster, CO 80021

PROPOSAL FOR EXCAVATING SERVICES

July 21, 2009

COMPANY: City of Castle Pine North
ADDRESS:
PHONE #:

JOB NAME: Lagae Ranch
LOCATION: Castle Pines, CO
FAX #

FOR CONSIDERATION set out below, HOGAN ACTION SERVICES, proposes to complete the services and perform the duties of excavation below:

SETUP	QUANTITY	UNIT COST	ITEM COST
Mobilization	1 EA	\$ 4,200.00 /ea	\$ 4,200.00
Vehicle Tracking Control	1 EA	\$ 1,500.00 /ea	\$ 1,500.00
Supply & Install Silt Fence	2,200 LF	\$ 1.65 /lf	\$ 3,630.00
Construction Fence	1,170 LF	\$ 1.91 /lf	\$ 2,234.70
		SETUP TOTAL	\$ 15,664.70
EARTHWORK	QUANTITY	UNIT COST	ITEM COST
Topsoil Stripped & stockpiled	8,490 CY	\$ 1.28 /cy	\$ 10,867.20
Onsite Cut To Fill - Tract A & B	44,435 CY	\$ 1.45 /cy	\$ 64,430.75
Cut Detention Pond - Tract B	29,524 CY	\$ 1.36 /cy	\$ 40,152.64
Stockpile Material To Fill Detention Pond	12,795 CY	\$ 1.36 /cy	\$ 17,401.20
Haul Excess Material to Tract D- W/Scrapers	35,416 CY	\$ 1.68 /cy	\$ 59,498.88
Diversion Ditch	665 LF	\$ 0.80 /lf	\$ 532.00
Topsoil Replaced on slopes	3,490 CY	\$ 1.28 /cy	\$ 4,467.20
Temporary Seeding & Mulching	4 AC	\$ 780.00 /ac	\$ 3,120.00
Biodegradable Straw/Coconut Erosion Control Blanket	4,400 SY	\$ 2.76 /sy	\$ 12,144.00
Berm Street Crossings	3 EA	\$ 2,300.00 ea	\$ 6,900.00
		EARTHWORK TOTAL	\$ 230,948.37
SUPPORT/EXTRAS	QUANTITY	UNIT COST	ITEM COST
Construction Survey With Certification	1 LS	\$ 6,250.00 /ls	\$ 6,250.00
Ripping W/D-9 Dozer:	26 HR	\$ 225.00 /hr	\$ 5,850.00
		SUPPORT/EXTRAS TOTAL	\$ 12,100.00
			GRAND TOTAL \$ 258,713.07

If Trucking Is Required To Haul Material To Tract D The Additional Cost Will Be 35,416 cy @ \$ 3.95 = \$ 139,893
For A New Grand Total Of \$ 386,506

Please Note - This will complete grading site to +/- .2 ft.
This will include taking all excess material to tract area A, B, and D.
Quantities include holding slopes down 4" for the replacement of topsoil.
Rip Rap is not included. Inlet Protection is not included. Pricing is based upon construction water being available onsite.
Budgetary items will be tracked in the field and invoiced accordingly.
Truck haul price is a budget at this time .

The PROPOSAL PRICE shall be as follows as per Customer's CAD file & plans listed below:
- CAD files received 2-4-09 from Lund Partnership labeled "Grade Phase 440-0101.dwg"

EXCLUDED FROM THIS PROPOSAL are the following:

Surveying, Engineering, Soil testing, NPDES permit, De-watering, Frost or snow removal, Rock or mud not loadable by scraper, Blasting, Rip-rap, Import/Export of material, Hazardous materials removal, Wall excavation and/or back-fill, Saw cutting, Demolition, Tree removal, Seeding, Inlet protection, Landscaping, Road widening, Traffic control, Permits, Fees or Bonds.

PAYMENT FOR SERVICES shall be made by Customer within twenty (20) days of Invoice date. A finance charge of 1.75% per month (21% A.P.R.) will be charged for any unpaid accounts after 30 days from Invoice date. Customer shall be obligated to pay all invoices irrespective of any dispute with the owner or others regarding payment. Any and all expenses including legal fees and costs will be paid by the Customer in the event legal action is initiated to collect overdue accounts, or in any arbitration or litigation between the parties relating in any way to the work by Hogan Action Services on the Project.

Please Note - These unit prices are based on our current fuel cost of \$1.90 per gallon. As the price of fuel changes, it directly impacts our operating costs for performing earthwork. Hogan has calculated that for each \$0.05 (five cents) change in fuel costs, the unit price for earthwork will be adjusted up or down \$0.01 per cubic yard. Hogan will review our fuel costs monthly and adjust prices after an initial increase or decrease of \$0.10 per gallon, and Customer agrees to these adjustments.

By accepting this Proposal, either by signing below or by entering into a subsequent contract or subcontract, Customer acknowledges and agrees that it is the intention of the parties that the terms and conditions contained herein shall be included in and deemed a part of any subsequent contract or subcontract agreement between the parties relating to the within Project, and that the terms and conditions in this Proposal shall have precedence and prevail over any such agreement and shall be controlling. Any of the terms or conditions in such agreement that are in conflict with the terms and conditions of this Proposal shall have no effect. Expressly, and without limitation, any "pay-when-paid" or "pay-if-paid" clause in any subsequent agreement shall be void and without effect.

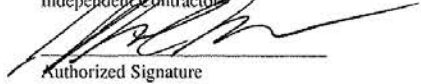
If Hogan has based this Proposal, in whole or in part, upon a soils report an/or a geologic report, any such report shall be deemed to be part of the contract documents for any subsequent contract or subcontract agreement relating in any way to the work described in this Proposal.

By executing any subsequent agreement relating in any way to the work described in this Proposal, Hogan Action Services does not waive, release, amend or substitute any of the terms and conditions of this Proposal.

This Proposal is VALID for thirty (30) days.

HOGAN ACTION SERVICES, INC.

Independent Contractor



Authorized Signature

J. Chris Hogan, President

CUSTOMER: _____

Authorized Customer Signature

Name & Title

Signed this _____ day of _____, 2009

**CITY OF CASTLE PINES NORTH
PUBLIC WORKS GENERAL SERVICES AGREEMENT**

Project Name: *LAGAE PARK SITE GRADING*

THIS PUBLIC WORKS GENERAL SERVICES AGREEMENT (the “Agreement”) is entered into, by and between **HOGAN ACTION SERVICES, INC.**, a Colorado corporation (the “Contractor”), and the **CITY OF CASTLE PINES NORTH, COLORADO**, a statutory municipality of the State of Colorado (the “City”). The effective date (“Effective Date”) of this Agreement shall be the date of execution by the City as evidenced below following execution by the Contractor. The City and the Contractor may be collectively referenced as the “Parties.”

RECITALS AND REPRESENTATIONS

WHEREAS, the City and the Castle Pines Parks Authority, a political subdivision of the State of Colorado (the “Authority”), are parties to that certain Reimbursement and License Agreement executed in October of 2009 (the “Reimbursement Agreement”); and

WHEREAS, the Reimbursement Agreement contemplates that the City will assist the Authority with certain grading activities on and around the Lagae Park Site (the “Project”); and

WHEREAS, the Reimbursement Agreement requires the City to enter into a not-to-exceed contract with the Contractor to undertake the Project; and

WHEREAS, the City desires to have the Project completed as more particularly described in this Agreement; and

WHEREAS, the Work described in this Agreement was publicly bid by the Authority; and

WHEREAS, the City has determined that undertaking the grading work contemplated herein is important to the growth and development of the Castle Pines North community, is in furtherance of the public welfare, and is furtherance of the additional purposes set forth in the Reimbursement Agreement; and

WHEREAS, the Contractor represents that it has the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the Agreement; and

WHEREAS, the City desires to engage the Contractor to provide the services described in this Agreement.

NOW, THEREFORE, in consideration of the representations set forth above, the benefits and obligations of this Agreement, and for other good and valuable consideration, the Parties agree as follows:

1.0 WORK AND CONTRACTOR PERFORMANCE

1.1 Work. As directed by and under the supervision of the Public Works Director of the City of Castle Pines North (or the Director’s designee) (the “Public Works Director”), the Contractor shall complete the grading services more particularly described in the proposal dated October 20, 2009, and attached hereto as **Exhibit A** (the “Work”).

- 1.2 Changes to Work. The City may request a change or changes in the Work. Any changes that are mutually agreed upon between the City and the Contractor shall be made in writing and upon execution by both Parties shall become an amendment to the Work described in this Agreement. To be effective, any written change must be signed by the Contractor and by the City Council or by a person authorized by resolution to sign on behalf of the City Council. No change order shall be effective unless and until executed by the City.
- 1.3 Performance of Work. The Work shall be commenced on or before **October 28, 2009** and shall be substantially completed on or before **December 4, 2009**, unless this Agreement is sooner terminated or suspended in accordance with the remaining terms of this Agreement. Time is of the essence in this Agreement.
- 1.4 Standard of Performance. In performing the Work, the Contractor shall use that degree of care and skill ordinarily exercised under similar circumstances by members of the same profession working in the south Denver metropolitan area. Contractor represents to the City that the Contractor is, and its employees performing such Work is, properly licensed and/or registered within the State of Colorado for the performance of the Work (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to competently, timely, and professionally complete the Work in accordance with this Agreement. The Contractor shall perform the Work in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.
- 1.5 Independent Contractor. The Contractor shall perform the Work as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent contractor. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: workers' compensation; disability, injury, or health; professional liability, errors and omissions; or retirement account contributions.

2.0 COMPENSATION

- 2.1 Stipulated Sum Agreement – Not to Exceed Amount. The City shall pay the Contractor in current funds for the Contractor's performance of the Contract the contract sum of **TWO HUNDRED FIFTY SEVEN THOUSAND SIX HUNDRED SIX AND 89/100 DOLLARS (\$257,606.89)**, which amount shall be inclusive of all reimbursable expenses and shall not be exceeded unless this Agreement is amended in writing ("Contract Sum"). The Contract Sum shall not be exceeded unless agreed to by City Council in writing.
- 2.2 Payment Processing: The Contractor shall submit requests for payment in a form acceptable to the Public Works Director. Such invoice shall, unless otherwise directed or accepted by the Public Works Director, contain the information required by Section 2.2.2 below, and sufficient information to account for all Contractor time, charges, fees, and reimbursable expenses for the Work during the stated period of the invoice. Following receipt of a Contractor's invoice, the City shall promptly review the Contractor's invoice.

- 2.2.1 The period covered by each Contractor invoice shall be one calendar month, ending on the last day of the month.
 - 2.2.2 Each invoice submitted by the Contractor shall indicate the percentage of completion of the Work (to date), the percentage of Work remaining through Project completion, and the amount due to Contractor for the work described in the invoice. Each invoice shall be reviewed for accuracy by the Public Works Director, who shall make site visits to the Project as deemed necessary to verify the accuracy of the invoice(s).
 - 2.2.3 The City shall retain ten percent (10%) from each invoice up to fifty percent (50%) completion of Work. After the Work has been 50% completed, the City shall pay the remaining invoices without retainage, if, in the opinion of the Public Works Director, satisfactory progress is being made. The 10% withheld retainage on the first 50% of the Work shall be retained until the Work is completed satisfactorily and finally accepted by City, so that at the end of the Agreement there will be retainage of 5% available to pay unpaid subcontractors and to complete any punch list items, with said punch list items to be determined by the Public Works Director.
- 2.3 City Dispute of Invoice or Invoiced Item(s): The City may dispute any compensation requested by the Contractor in an invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the City, the City shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The City shall pay the Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the City disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the City following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the City shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.
- 2.4 Notice of Final Payment. The City shall publish a “notice of final payment” in a legal Douglas County newspaper prior to making final payment to the Contractor. This notice of final payment advertises the date, time, and place when final payment will be made and is intended to alert subcontractors so they can present any claims for unpaid amounts to the City. The final payment procedure typically delays the final payment made to Contractor of the retainage amount. Notwithstanding anything in this Agreement to the contrary, final payment shall not be made to Contractor until the City has complied with Section 38-26-107, C.R.S. and all claims, if any, have been resolved to the satisfaction of the City.

3.0 CONTRACTOR’S GENERAL RESPONSIBILITIES

- 3.1 Contractor shall fully acquaint itself with the available information related to the Project. The Contractor is obligated to affirmatively request from the City such information that

the Contractor, based on its professional experience, should reasonably expect is available and which would be relevant to the performance of the Work.

- 3.2 Contractor shall perform the Work in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to Contractor's performance that are not addressed by the Agreement.
- 3.3 Contractor shall undertake all of the Work in a timely and professional manner.
- 3.4 The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions. The Contractor shall be responsible for obtaining all licenses and permits necessary to perform the Work, at the Contractor's expense, unless specifically stated otherwise in this Agreement.
- 3.5 The Contractor shall furnish performance and payment bonds for 100% of the Contract Sum and such bonds shall be in effect during the entire term of this Agreement and any applicable warranty period following the completion of the Project. The company providing the bond must be acceptable to the City.

4.0 TERM AND TERMINATION

- 4.1 Term. Contractor shall perform the Work on a continuing basis at the direction of the Public Works Director until such Work is terminated or suspended in accordance with this Agreement or the Project is completed. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Work without the written consent of the Public Works Director.
- 4.2 Termination for Non-Performance. Should a Party fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing Party in accordance with this section. The performing Party shall first notify in writing the non-performing Party of the specific failure to perform which notice shall demand that such non-performance be cured or remedied within not less than ten (10) days of the date of the delivery of such notice. In the event the non-performing Party fails to timely cure or remedy such non-performance following such notice and demand, the performing Party may elect to terminate the Agreement by notifying the non-performing Party in writing of its election to terminate for non-performance which termination shall be effective upon the non-performing Party's receipt of such notice of termination. In the event of termination for non-performance, the Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Work and reimbursable expenses. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City. Provided that notice of non-performance is provided in accordance with this Section, nothing in this Section shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.
- 4.3 Suspension of Work. The City may suspend the Contractor's performance of the Work at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor. Upon such notice of suspension, the Contractor shall immediately cease performance of the Work except: (1) as may be specifically authorized by the notice of

suspension (e.g., to secure the work area from damage due to weather); or (2) for the submission of an invoice for Work performed prior to the date of suspension in accordance with this Agreement.

- 4.4 Reinstatement Following Suspension. The City may at its discretion reinstate Work following suspension. If suspended Work is reinstated within (30) days of the date of suspension, the Contractor shall recommence performance in accordance with this Agreement. If suspended Work is reinstated more than thirty-one (31) days following the date of suspension, the Contractor may elect to: (1) terminate this Agreement pursuant to Section 4.2; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the City an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the City, to terminate this Agreement pursuant to Section 4.2.
- 4.5 Effect of Termination. Upon the date of termination, all rights and duties of the Parties toward each other shall cease except:
- A. Section 2.0 (Compensation) shall remain effective and survive termination in order that the Parties may process and reach final payment for all outstanding and undisputed amounts owing to Contractor for unpaid Work completed as of the date of termination and reimbursable expenses, if any; and
 - B. Section 1.5 (Independent Contractor), Section 6.0 (Indemnification), and any other provision that by specific language or evident intent of the Parties was intended to survive termination of this Agreement or is necessary for full performance of the Agreement, shall survive termination of this Agreement; and
 - C. Provided that notice of non-performance is provided in accordance with Section 4.2, nothing in this Section shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

5.0 INSURANCE

- 5.1 Forms of Insurance Required. The Contractor agrees to obtain and maintain, at its own expense, for all Work covered by this Agreement, the following insurance:
- 5.1.1 Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.
 - 5.1.2 Commercial General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be

endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

5.1.3 Commercial Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Work. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

5.2 Insurance Rating. The policies of insurance required by Section 6.1 shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide, or as otherwise determined to be acceptable to the City. All policies and coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

5.3 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by Sections 6.1 and 6.2, all policies of insurance shall conform to all of the following:

5.3.1 All policies of insurance shall be primary insurance, and any insurance carried by the City, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor.

5.3.2 No policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

5.3.3 For all policies of insurance, the Contractor shall be solely responsible for any deductible losses under any policy required above.

5.3.4 Every policy of insurance shall provide that the City will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.4 Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City immediately upon demand by the City, or the City may offset the

cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

- 5.5 Insurance Certificates. Prior to commencement of the Work, the Contractor shall submit to the City certificates of insurance for all insurance required by this Agreement. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 6.0 shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. The City may request and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of insurance required by this Agreement or obtained by the Contractor and any endorsement of such policy. The City may, at its election, withhold payment for Work until the requested insurance policies are received and found to be in accordance with the Agreement.

6.0 INDEMNIFICATION AND HOLD HARMLESS

The Contractor expressly agrees to indemnify and hold harmless the City, and any of its officials, officers, agents, contractors, attorneys, or employees from all claims, damages, liability, or court awards, including costs and reasonable attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any negligent or tortuous conduct, error, omission, or act of commission by the Contractor or any of its employees, agents, or others acting on the Contractor's behalf in performance of the Work. Nothing in this Agreement shall be construed as constituting a covenant, promise, or agreement by the Contractor to indemnify or hold the City harmless for any negligence attributable to the City. The Contractor's obligation to indemnify pursuant to this section shall survive the completion of the Work and shall survive the termination of this Agreement.

7.0 FORCE MAJEURE

Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

8.0 IMMIGRATION LAWS

Contractor shall not knowingly employ or contract with an illegal alien to perform the work identified in this Agreement, or contract with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the Agreement. Execution of this Agreement by Contractor shall constitute a certification by Contractor that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in the E-Verify Program jointly administered by the United States Department of Homeland Security and the Social Security Administration, or any successor program (the "E-Verify Program"), or the program operated by the Colorado Department of Labor and Employment (the "Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement. If Contractor participates in the Department Program, the provisions of Section 8-17.5-102(5)(c), C.R.S. shall apply.

8.1 Contractor shall comply with the following:

8.1.1 Contractor shall not utilize the E-Verify Program or the Department Program procedures to independently undertake pre-employment screening of job applicants while the Agreement is being performed.

8.1.2 Contractor shall require each subcontractor to certify that subcontractor will not knowingly employ or contract with an illegal alien to perform work under the Agreement. If Contractor obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien Contractor shall be required to:

(a) Notify the subcontractor and City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(b) Terminate the subcontract with the subcontractor if within three (3) days of receiving notice from Contractor, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the Agreement with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

8.1.3 Contractor shall comply with any reasonable request by the Department of Labor and Employment ("Department") made in the course of an investigation by the Department.

8.2 If Contractor violates any provision of this Section 8.0, City may terminate the Agreement upon written notice given to Contractor and the opportunity to cure said violation or violations as set forth herein. If, within ten (10) business days following Contractor's receipt of the violation notice contemplated herein, Contractor has not provided written evidence satisfactory to City that said violation has been corrected, City may proceed to terminate the Agreement and Contractor shall be liable to City for actual and consequential damages of City resulting from such termination and City shall report such violation by Contractor to the Colorado Secretary of State, as required by law.

9.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

- 9.1 Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in the Contract Sum; and/or
- 9.2 Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- 9.4 Terminate the Agreement.

The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

10.0 MISCELLANEOUS PROVISIONS

- 10.1 No Waiver of Rights: A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The City's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the City Council or by a person expressly authorized to sign such waiver by resolution of the City Council of the City of Castle Pines North, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.
- 10.2 No Waiver of Governmental Immunity: Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- 10.3 Affirmative Action: Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- 10.4 Binding Effect: The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 10.4 shall not authorize assignment.
- 10.5 No Third Party Beneficiaries: Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Contractor, except for the Authority. Any third-party receiving a benefit from the Agreement, other than the Castle Pines Parks Authority, is an incidental and unintended beneficiary only.
- 10.6 Article X, Section 20/TABOR: The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City of Castle Pines North, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.
- 10.7 Governing Law, Venue, And Enforcement: This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Douglas County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating to this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.
- 10.8 Survival of Terms and Conditions: The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 10.9 Assignment and Release: All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the City Council for Castle Pines North. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the City Council for the City of Centennial. No assignment shall release the Applicant from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.
- 10.10 Paragraph Captions: The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

- 10.11 Integration and Amendment: This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the City and the Contractor.
- 10.12 Severability: Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 10.13 Incorporation of Exhibits: Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.
- 10.14 Notices: Any notice, or other communication given by one party to the other party under this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, addressed to the party at the addresses set forth below; and such notice, payment, or other communication shall be deemed given when so hand-delivered or three (3) business days after so mailed:

To Contractor:

Hogan Action Services, Inc.
Attn: J. Chris Hogan, President
9035 Wadsworth Parkway, Suite 4100
Westminster, CO 80021

To City:

City of Castle Pines North
Attn: City Manager
558 Castle Pines Parkway
Unit B4-208
Castle Rock, CO 80108

Any party may direct the other in writing to send any notices to such addresses or to any addresses subsequently designated by that party in writing.

11.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City of Castle Pines North and the Contractor and bind their respective entities.

THIS AGREEMENT is executed and made effective as provided above.

CITY:

CITY OF CASTLE PINES NORTH, COLORADO

By: _____
Maureen A. Shul, Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk or Deputy City Clerk

For City Attorney's Office

CONTRACTOR:

HOGAN ACTIONSERVICES, INC., a Colorado corporation

By: _____
J. Chris Hogan, President

**EXHIBIT A
TO
PUBLIC WORKS GENERAL SERVICES AGREEMENT**